

2009-008.1



San Diego County SHERIFF'S DEPARTMENT

NOTICE OF PROPOSED DISCIPLINARY ACTION

| | | | |
|---|---|------------------|----------------|
| TO: William Gore, Sheriff | | DATE: 8-26-2009 | |
| It is recommended that the following disciplinary action be administered to the below named employee: | | | |
| EMPLOYEE'S NAME: | Jason Smith | TITLE: | Deputy Sheriff |
| DEPARTMENT POLICY AND / OR PROCEDURE SECTION(S) VIOLATED: | 2.41 Department Reports | | |
| | | | |
| | | | |
| RECOMMENDED DISCIPLINE: | Pay Step Reduction equivalent to a Three (3) Day Suspension | | |
| SECOND LEVEL SUPERVISOR: | Lt. Phil Brust | DATE: | 08/26/2009 |
| LIST PRIOR RELATED OFFENSE(S) WITHIN LAST FIVE YEARS WITH DATE & ACTION | None | | |
| | | | |
| | | | |
| I have been advised of the above charges and recommended discipline: | | | |
| EMPLOYEE'S SIGNATURE: | | DATE: 09/16/09 | |
| 2 nd LEVEL SUPERVISOR SIGNATURE: | | DATE: 9/14/09 | |
| 3 rd LEVEL SUPERVISOR SIGNATURE: | | DATE: 09-18-09 | |
| COMMENTS: | | | |
| REVIEWED BY INTERNAL AFFAIRS: | | DATE: 9-23-2009 | |
| 4 th LEVEL SUPERVISOR SIGNATURE: | | DATE: 11/03/09 | |
| COMMENTS: | | | |
| ADDITIONAL REVIEW: | | DATE: 11/12/09 | |
| ADDITIONAL REVIEW: | | DATE: 12/7/09 | |
| ADDITIONAL REVIEW: | | DATE: 12/7/09 | |
| INTERNAL AFFAIRS SECTION | | | |
| <input type="checkbox"/> WRITTEN REPRIMAND BY: | | DATE: | |
| <input checked="" type="checkbox"/> NOTICE OF INTENT AND CHARGES: J. MAKYON, SGT | | DATE: 10/21/09 | |
| <input checked="" type="checkbox"/> ORDER SERVED: J. MAKYON, SGT | | DATE: 01/6/10 | |
| <input checked="" type="checkbox"/> CIVIL SERVICE NOTIFIED: P. Lorenz, AdminSecII | | DATE: 01-12-2010 | |
| <input checked="" type="checkbox"/> PAYROLL NOTIFIED: P. Lorenz, AdminSecII | | DATE: 01-12-2010 | |
| FINAL ACTION TAKEN: PAY STEP REDUCTION = THREE (3) DAY SUSPENSION | | DATE: 12-07-2009 | |

FROM THE OFFICE OF



INTERNAL AFFAIRS – CONFIDENTIAL

January 12, 2010
IA# 2009-008.1

TO: Pedro Munoz, Jr., Department Personnel Officer
Payroll (O41)

FROM: Brian Conway, Lieutenant
Internal Affairs Unit (O41)

DISCIPLINARY ACTION – DEPUTY JASON SMITH #4135 / 015487

Pursuant to an Order of Pay Step Reduction and Charges dated 11-16-2009, Deputy Jason Smith #4135 / 015487 has been reduced in pay as indicated below:

| | |
|--|------------------------------------|
| Number of Pay Steps: | One (1) |
| Equivalent to number of suspension days: | Three (3) (Based on 8.5 hour days) |
| Equivalent number of hours of pay loss: | 25.5 hours |

Please take appropriate steps to implement this action.

Thank you.

A handwritten signature in black ink, appearing to read 'Brian Conway' with a stylized flourish at the end.

Brian Conway, Lieutenant
Internal Affairs Unit

BC: pgl

C: Deputy Jason Smith

FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

January 12, 2010
IA# 2009-008.1

TO: Civil Service Commission
FROM: Brian Conway, Lieutenant
Internal Affairs Unit

ORDER OF PAY STEP REDUCTION AND CHARGES – JASON SMITH

The Order of Pay Step Reduction and Charges dated 1-16-2009 filed against Jason Smith has been received by the Civil Service Commission on: _____

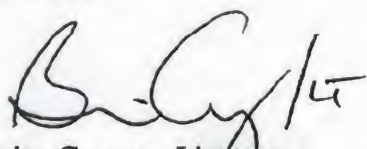
Date

Commission Response:

- ☐ The above individual **HAS** appealed the Order of Pay Step Reduction and Charges.
- ☐ The above individual **HAS NOT** appealed the Order of Pay Step Reduction and Charges.

Please return this form to the Sheriff's Internal Affairs Unit (MS-O41) as soon as possible.

Thank you.


Brian Conway, Lieutenant
Internal Affairs Unit
(858) 974-2065

Attachment



RECEIPT OF MATERIALS

EMPLOYEE: JASON SMITH #4135

Case # 2009-008.1

| DESCRIPTION OF DOCUMENT | EMPLOYEE RECEIVED (DATE & INITIAL) | APPOINTING AUTHORITY (Date & Sign) |
|---|---------------------------------------|---------------------------------------|
| Notice of Proposed Disciplinary Action to Jason Smith dated 08-26-2009 | 10/21/09 JS | 12/1/09 JS |
| Notice of Intent of Pay Step Reduction and Charges to Jason Smith dated 10-05-2009 | | |
| Disciplinary Recommendation & Rationale to William Gore, Sheriff from Phil Brust, Lieutenant dated 08-26-2009 | | |
| Investigative Reports by Eric Berblinger, Sergeant dated 07-17-2009 and attachments | | |
| Skelly Conference Letter to Jason Smith | | |
| Order Not to Disclose Materials to Jason Smith | | |
| Declaration/Acknowledgement of Personal Service | | |
| Two (2) CD's | | |
| | | |
| | | |
| | | |



RECEIPT OF MATERIALS

EMPLOYEE: JASON SMITH #4135

Case # 2009-008.1

[illegible]



San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



William D. Gore, Sheriff

Thomas J. Cooke, Undersheriff

November 16, 2009

Jason Smith
[REDACTED]
[REDACTED]

Dear Deputy Jason Smith:

ORDER OF PAY STEP REDUCTION AND CHARGES, CASE #2009-008.1

I hereby order that you be reduced in pay from your position as a Deputy (Class #5746) in the Sheriff's Department and the Classified Service of the County of San Diego for a period equivalent to three (3) working days, (25.5) hours for each and all of the following causes:

CAUSE I

You are guilty of inefficiency, as set forth under Section 7.2 (b) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.41 – **Department Reports**, in that: On January 1, 2009, you authored a deputy report describing the force you witnessed being applied to inmate [REDACTED]. The language in this report was misleading when you wrote, "*Deputy Holder opened the door and used his foot against the sole of [REDACTED]' shoe to try and shove his leg out of the doorway*" when this would have accurately been described as, "kicking". You wrote in your department report, "*moved him across the cell*" when in effect, Deputy Holder threw him across the cell. You used such verbiage in an attempt to minimize the actions of Deputy Holder and thereby wrote false and improper information reasonably expected to be included in your deputy report.

CAUSE II

You are guilty of acts which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the **San Diego County Sheriff's Department Executive Order** and the **Mission, Vision, Values and Goals**. Your conduct constituting such acts inimical to the public service is that set forth under Cause I above.

"Keeping the Peace Since 1850"

97

Order of Pay Step Reduction and Charges, IA Case # 2009-008.1
Deputy Sheriff – Jason Smith
November 16, 2009

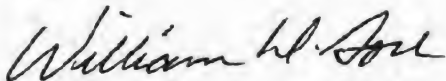
Page 2 of 2

This discipline will be imposed on 01/29/10 unless other arrangements are made within your command.

Your attention is directed to Sections 904.1, 904.2, 909, 909.1, 910.1(k), and 910 (k) (l) of the Charter of the County of San Diego and Rule VII of the Civil Services Rules. If you wish to appeal this order to the Civil Service Commission of the County of San Diego, **you must file such an appeal and an answer in writing with the Commission within ten (10) calendar days after this order is presented to you.**

Such an appeal and answer must be in writing and delivered to the Civil Service Commission at its offices at 1600 Pacific Highway, Room 458, San Diego, California 92101, within such ten (10) calendar day period. An appeal is not valid unless it is actually received by the Commission within such ten (10) calendar day period. **A copy of such appeal and answer shall also be served, either personally or by mail, by the employee on the undersigned within the same ten (10) calendar day period.**

Sincerely,



William D. Gore, Sheriff

WDG:elb



FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of San Diego, and that I served the

- ☐ **NOTICE OF INTENT OF PAY-STEP REDUCTION AND CHARGES**
- ☐ **NOTICE OF INTENT TO SUSPEND AND CHARGES**
- ☐ **NOTICE OF INTENT TO TERMINATE AND CHARGES**

- ☒ **ORDER OF PAY-STEP REDUCTION AND CHARGES**
- ☐ **ORDER OF SUSPENSION AND CHARGES**
- ☐ **ORDER OF TERMINATION AND CHARGES**

- ☐ **NOTICE REGARDING RESTRAINING ORDER DATED**

of which a true copy is attached hereto, by delivering a copy thereof to

JASON SMITH personally at FAIRBROOK on
JANUARY 6, 2010.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6TH day of JANUARY, 2010, at FAIRBROOK, California.

[Signature]
Signature of person making personal service

ACKNOWLEDGEMENT OF SERVICE

I do hereby acknowledge receipt of the above noted document.

Executed this 6TH day of JAN, 2010.

SIGNED [Signature]

IA# 2009-008.1

Released from I.A. Files

To: DS



William D. Gore, Sheriff

San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



Thomas J. Cooke, Undersheriff

October 5, 2009

Jason Smith
[REDACTED]
[REDACTED]

Dear Deputy Jason Smith:

NOTICE OF INTENT OF PAY STEP REDUCTION AND CHARGES, CASE #2009-008.1

Please take notice that it is my intention to recommend to the Sheriff that you be reduced in pay from your position as a Deputy (Class #5746) in the Sheriff's Department and the Classified Service of the County of San Diego for a period equivalent to three (3) working days, (25.5) hours for each and all of the following causes:

CAUSE I

You are guilty of inefficiency, as set forth under Section 7.2 (b) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.41 – Department Reports**, in that: On January 1, 2009, you authored a deputy report describing the force you witnessed being applied to inmate [REDACTED]. The language in this report was misleading when you wrote, "*Deputy Holder opened the door and used his foot against the sole of [REDACTED]' shoe to try and shove his leg out of the doorway*" would have accurately been described as, "kicking". You wrote in your department report, "*moved him across the cell*" when in effect, Deputy Holder threw him across the cell. You used such verbiage in an attempt to minimize the actions of Deputy Holder and thereby wrote false and improper information reasonably expected to be included in your deputy report.

CAUSE II

You are guilty of acts which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the **San Diego County Sheriff's Department Executive Order** and the **Mission, Vision, Values and Goals**. Your conduct constituting such acts inimical to the public service is that set forth under Cause I above.

"Keeping the Peace Since 1850"



Notice of Intent of Pay Step Reduction and Charges, IA Case #2009-008.1 Page 2 of 2
Deputy Sheriff – Jason Smith
October 5, 2009

You have **five (5)** regular business days to request a Skelly Conference. You may respond either orally, in writing, or both, regarding the above proposed charges and discipline. Your response will be considered by the Sheriff before final action is initiated. Upon receipt of this notice you will be provided with all documents possessed by this department upon which this proposed action is based. If you have any questions of said documents, please contact Lieutenant Conway of the Internal Affairs Unit.

You have until 4:30 p.m. on OCTOBER 28, 2009 to contact Internal Affairs at (858) 974-2065, if you wish to respond to the above charges and discipline. Internal Affairs will provide you the name of a Skelly Officer, whom you should contact without delay, as the conference must be held within ten (10) days, unless waived by mutual agreement. If there are extenuating circumstances precluding you from staying within this time limit, contact Internal Affairs immediately.

If you fail to respond, or if your response is unsatisfactory, an Order of Pay Step Reduction and Charges will be served upon you and the discipline initiated.

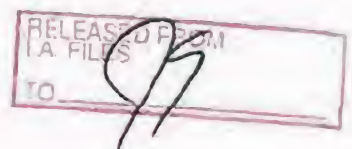
Sincerely,

WILLIAM D. GORE, SHERIFF



Tim Curran, Captain
Vista Patrol Station

WDG:TC:eb



FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of San Diego, and that I served the

☒ **NOTICE OF INTENT OF PAY-STEP REDUCTION AND CHARGES**

☐ **NOTICE OF INTENT TO SUSPEND AND CHARGES**

☐ **NOTICE OF INTENT TO TERMINATE AND CHARGES**

☐ **ORDER OF PAY-STEP REDUCTION AND CHARGES**

☐ **ORDER OF SUSPENSION AND CHARGES**

☐ **ORDER OF TERMINATION AND CHARGES**

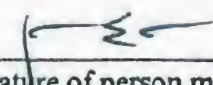
☐ **NOTICE REGARDING RESTRAINING ORDER DATED**

of which a true copy is attached hereto, by delivering a copy thereof to

JASON SMITH personally at FALLBROOK on
OCTOBER 21, 2009.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21 day of OCTOBER, 2009, at FALLBROOK, California.



Signature of person making personal service

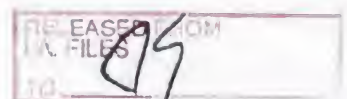
ACKNOWLEDGEMENT OF SERVICE

I do hereby acknowledge receipt of the above noted document.

Executed this 17 day of 21, 2009.

SIGNED 

IA# 2009-008.1





COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

Date: August 26, 2009

TO: William Gore, Sheriff

FROM: Phil Brust, Lieutenant
Fallbrook Patrol Substation

VIA: Chain of Command

Disciplinary Recommendation and Rationale for Deputy Sheriff Jason Smith #4135
RE: Internal Affairs Case: 2009-008.1

RECOMMENDATION

I have read the investigation and listened to the recorded interviews prepared by Sergeant Berblinger. Sergeant Berblinger found Deputy Smith in violation of Department Policy and Procedure sections:

2.41 Department Reports

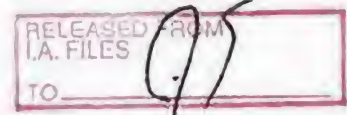
I concur with Sergeant Berblinger's conclusions and findings. Based on the nature of the conduct, and after weighing the factors in aggravation and mitigation, I recommend Deputy Smith receive a pay-step reduction equivalent to a three (3) day suspension.

RATIONALE

Sergeant Berblinger's investigation was thorough and fair and there is a preponderance of evidence to believe the alleged misconduct occurred. In reviewing the investigation and recordings, I have found no evidence of bias or ill will by Sergeant Berblinger or any of the witnesses in this investigation. Deputy Smith's misconduct was independent of any verbal or written order by a Department supervisor.

On August 19, 2009 at 1539 hours, I met Deputy Smith in the Lieutenant's conference room in the Fallbrook Patrol Substation.

Deputy Smith elected not to have an employee representative with him.



Before making my disciplinary recommendation, I provided Deputy Smith a copy of the investigation to review. At 1539 hours, I began the audio-recorded meeting with Deputy Smith. The recorded meeting was transferred to a CD and is attached to this report.

The facts in this case are not in dispute. Deputy Smith was assigned to patrol at the Fallbrook Patrol Substation the evening of January 1, 2009. At approximately 2150 hours on January 1, 2009, Deputy Holder and Deputy Brown transported [REDACTED] to the Fallbrook Substation after [REDACTED] was arrested for being drunk in public. While attempting to place [REDACTED] into a holding cell at the Fallbrook Substation, [REDACTED] became physically hostile toward Holder and Brown. Deputy Holder attempted to remove the handcuffs from [REDACTED]. Once one of the handcuffs was removed, [REDACTED] continued to passively resist the deputy's efforts to place him into a holding cell.

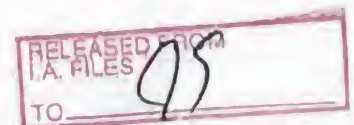
Once [REDACTED] personal property was taken and his handcuffs removed, he was placed into a holding cell. [REDACTED] attempted to kick Deputy Holder, but did not strike him. Holder responded by re-entering the cell, grabbing [REDACTED] legs and pushing [REDACTED] into a corner of the cell. After Holder released [REDACTED] legs and exited the holding cell, Deputy Brown attempted to close the door to the holding cell. [REDACTED] put his foot in the way to prevent the door from closing. Holder saw this, opened the cell door and kicked [REDACTED] foot. Deputy Smith, in his Deputy Report, stated, "*Deputy Holder opened the door and used his foot against the sole of [REDACTED] shoe to try and shove his leg out of the doorway*". The surveillance video clearly shows Holder kicked [REDACTED] foot. This language is an attempt to minimize the actions of Deputy Holder. Deputy Smith admits in his interview with Sergeant Berblinger that Holder "kicked" [REDACTED] leg.

When discussing Deputy Holder throwing [REDACTED] across the cell, Deputy Smith stated Deputy Holder "*moved him across the cell*" when in effect, Deputy Holder threw him across the cell.

During my interview with Deputy Smith, he was forthcoming in his statement; confirming he should have better documented the use of force involving [REDACTED] and should have taken action to prevent it. Smith stated he did not deliberately attempt to hide his actions or observations when he wrote his Deputy Report. He understands the importance of proper documentation with regard to his actions especially when using force.

I contacted the Internal Affairs Unit and found Deputy Smith has no record of prior discipline. Deputy Smith is 42 years old and has been a deputy sheriff for 13 years. He is currently a training officer. Two facts point toward mitigation. Deputy Smith has no record of discipline for similar offenses and he has accepted responsibility for his act. Conversely, a deputy (training officer) with Smith's tenure and experience is expected to take reasonable steps to safeguard a prisoner in his or her custody. He should have shown leadership in this situation and stepped in to prevent the unnecessary escalation of force.

Deputy Smith had other options with regard to his contact with [REDACTED]. This is not to say force



would not have been necessary; the situation will dictate the course of action. What is evident is Deputy Smith did not exercise good judgment in his documentation of the use of force nor did he take a reasonable course of action with regard to the use of force on [REDACTED].

Deputies are directed to use only reasonable and necessary force to gain/retain control of the circumstance. In this instance, Deputies had a prisoner who was drunk and not complying with their verbal instructions. There is no evidence, in this situation, which would require the escalation of force.

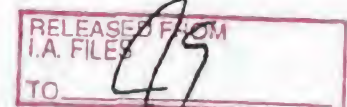
In mitigation, Deputy Smith accepted responsibility and expressed regret for his actions. He admitted the situation should have been handled differently.

Deputy Smith's lack of proper and accurate documentation in a situation which was clearly an unreasonable use of force warrants discipline. His actions have the potential to erode department credibility, public confidence, and expose the Department to civil liability. I believe my recommendation is appropriate and proportionate for the conduct to which Deputy Smith has admitted as it relates to his lack of proper and accurate documentation. I believe the discipline will correct Deputy Smith's behavior and deter others from similar conduct. It will also serve as a base for progressive discipline for Deputy Smith.



Phil Brust, Lieutenant August 26, 2009
Fallbrook Patrol Substation

PEB:peb



ENDORSEMENTS:



T. Curran, Captain

Date 08-27-09

Approve ☒

Disapprove ☐

Comments:

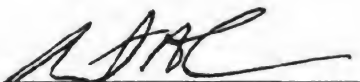
A. Skoglund, Commander

Date _____

Approve ☐

Disapprove ☐

Comments:



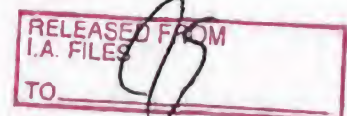
R. Ahern, Assistant Sheriff

Date 11/12/09

Approve ☒

Disapprove ☐

Comments:



Disciplinary Recommendation and Rationale
Deputy Sheriff Jason Smith
Internal Affairs Case: 2009-008.1

Page 5 of 5

_____ Date _____
J. Cooke, Undersheriff

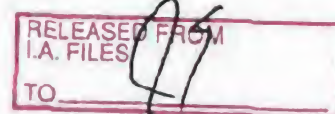
Approve ____ Disapprove ____

Comments:

_____ Date _____
William Gore, Sheriff

Approve ____ Disapprove ____

Comments:



From the Office of

INTERNAL AFFAIRS - CONFIDENTIAL

ORDER NOT TO DISCLOSE MATERIALS

Pursuant to Department Policy, materials are being furnished to you upon which your proposed discipline is based. These materials are reproductions and are a part of the confidential employee personnel records of the San Diego Sheriff's Department. Dissemination of this information is restricted to a need and a right to know.

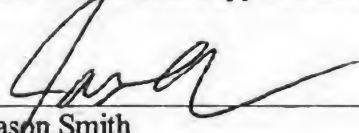
You are ordered not to disclose, release, or copy these materials to or for anyone, other than your attorney and/or association representative, without the written authorization of the Internal Affairs Lieutenant. Materials include all written documentation, tape recordings, and videotapes.

Any unauthorized release of information contained in these documents compromises the confidentiality of your personnel file, and may impede the Department's ability to protect your confidentiality in future discovery motions. This could subject you and the County to unnecessary liability and criticism, to which the Department may be required to defend in a public forum.

You are strongly encouraged to destroy or return these materials when they no longer serve a useful purpose. Should you desire to review material related to your discipline at a later time, you may make arrangements with the Internal Affairs Unit.

Failure to abide by this order could result in a charge of insubordination, and subject you to disciplinary action up to and including termination.

I have received a copy of this order.



Jason Smith

I.A. Case # 2009-008.1



From the Office of

INTERNAL AFFAIRS - CONFIDENTIAL

**Skelly Conference Letter
Case # 2009-008.1**

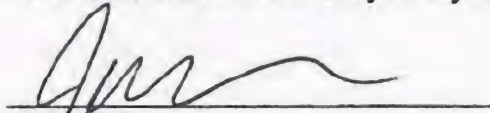
As indicated on the "Notice of Intent" to discipline, which you are receiving, disciplinary action against you is being considered. If you wish to invoke your right to a pre-disciplinary due process hearing on this matter (*Skelly Conference*), you must make the request within five (5) regular business days. The Skelly Conference is a relatively informal hearing, not an adversarial evidentiary trial. The final date to request a hearing is indicated on your "Notice of Intent". Your request should be made by calling the Internal Affairs Unit at (858) 974-2065.

If you do not request the conference within that time, your right to a Skelly Conference will have been waived, and the recommended discipline may be imposed.

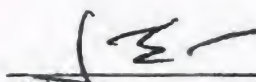
Your Skelly rights are:

1. To receive a written "Notice of Intent" to discipline, which may be served upon you either in person or by mail. That notice will include the level of proposed discipline, the charges, and a brief explanation of the reason for the discipline.
2. To receive a copy of the materials upon which the proposed discipline is based, including reports, tape recordings, photographs, etc. Any item certified as confidential and withheld from you by the department cannot be used as a basis for discipline.
3. To have sufficient time to review the supporting materials so that your response can be prepared.
4. To respond orally, in writing, or both to the proposed discipline and charges.
5. To a hearing officer who is not in your chain of command.
6. To have a representative or attorney present at the hearing.
7. To receive copies of all materials prepared as a result of the Skelly Conference.
8. To receive a new Skelly Conference for any new charges or increased discipline, which arise from the Skelly Conference.

I have read and understand my Skelly rights.



Jason Smith



Witness 10/21/09
Date

